

Sunset Public Hearing Questions for
CHILD CARE AGENCY LICENSING BOARD OF REVIEW
Created by Section 71-3-510, *Tennessee Code Annotated*
(Sunset termination June 2013)

1. Provide a brief introduction to the board, including information about its purpose, statutory duties, administrative attachment and staff.

The board reviews, in a manner similar to a jury in a civil court, actions initiated by the Department of Human Services and the Department of Children's Services against the license of a child care agency. The board proceedings are presided over by a state administrative law judge who has been assigned to the case by the office of the Secretary of State. The board has one primary staff person – Recording Secretary. The Recording Secretary schedules the hearings, makes arrangements for the hearing facilities, and coordinates the participation in the hearings. The Recording Secretary is an employee of the Department of Human Services.

2. Provide a list of the five stated regular board members and describe how membership complies with Section 71-3-510(a), *Tennessee Code Annotated*. Are there any vacancies on the board? If so, what steps have been taken to fill the vacancies?

**Kevin Huffman – DOE Commissioner – designee Jan Bushing
John J. Dreyzehner – DOH Commissioner – designee Loraine Lucinski
Linda O'Neal – Tennessee Commission on Children and Youth- designee Richard Kennedy
DCS Standards Committee Member – Sandra Wilson (designated by DCS Commissioner Kathryn O'Day)
DHS Standards Committee Member - Vacant**

The above members or their designee represent the various departments as specified in statute.

Currently, the DHS Standards Committee Member position is vacant. Recommendations for a replacement will be submitted to Commissioner Hatter, for consideration.

In addition, there is one at-large vacancy on the board. A communication will be sent to the five board members designated by statute to consider recommendations for the at-large vacancy.

3. What individuals are currently in the pool of at-large representatives? Section 71-3-510(a), *Tennessee Code Annotated*, specifies that the pool will consist “of up to twelve representatives at-large to be selected by the five stated board members.” What criteria were used in selecting them? What is the largest and smallest number of at-large members the pool has had during the last five years?

During fiscal years 2011 and 2012, at how many meetings has each of the at-large members been selected to fill the four open positions? Have any of the twelve been in the pool for two years or more and not participated as an at-large member at meetings of the board?

The current at-large members are: Gloria Reed-Benne, Patti Gibson, Marsha Ewart, Janie Kelley, Kay Boeckman, Lynn Deal, Judy Cole, Mildred Lawhom, Carol Chapple, Janice Zimmerman, Bobette Thompson.

The statute does not establish a procedure for the nomination or selection of at-large members. At-large members are suggested by the five (5) department representatives comprising the main board and Licensing staff . The five (5) department representatives then vote on the selection of the at-large members. We strive to have a representative from each department and four (4) at-large members at each board proceeding. During the last five years the number of persons in the at-large pool has ranged from ten (10) to twelve (12) members. All have participated at meetings of the board.

4. Since there are five regular members of the board and a quorum, by statute, consists of five persons, have any meetings taken place during fiscal years 2011 and 2012 with no at-large members? If so, how many?

No meetings took place without any at-large members.

5. How many times did the board meet during fiscal years 2011 and 2012, and how many members were present at each meeting?

The board met to hear one (1) denial case, two (2) revocation cases, and one (1) civil penalty case during the 2011 fiscal year.

The board has met to hear four (4) denial cases and two (2) civil penalty cases during the 2012 fiscal year.

All of the legal enforcement actions heard by the board during the 2011-2012 fiscal years were upheld and none of the cases were appealed to Chancery Court.

All board proceedings are recorded by a certified court reporter. Five (5) to seven (7) members participated in each hearing.

Additional Information/Actions: There are two (2) pending hearings scheduled on May 30, 2012 and July 25, 2012.

- ♦ **Nine (9) cases were settled between the Department and the child care agency by agreed order before the scheduled hearing took place. Board rules require that any settlement or dismissal of a case be approved by agreement of the Board. (Tenn. Comp. R. & Regs. 1240-5-13-.05(4).**
- ♦ **Four (4) civil penalty cases, two (2) denial cases and one (1) Revocation cases were withdrawn by the child care agency before the scheduled hearing took place, making the legal enforcement action automatically effective.**
- ♦ **Two (2) Denial cases are still Pending (the hearings are scheduled for 5/30/12 and 7/25/12).**

6. **What per diem or travel reimbursement do members receive? How much was paid to board members during fiscal years 2011 and 2012?**

Members received reimbursement for travel expenses at the standard reimbursement rate (i.e. food, lodging, mileage) established by the Department of Finance and Administration.

7. **How does the board ensure that it is operating in an impartial manner and that there is no conflict of interest?**

The hearing must comply with all requirements of the Administrative Procedures Act, which is overseen by the assigned Administrative Law Judge. The judge specifically asks the board if any of the members have any prior knowledge of the case or child care agency at the beginning of the hearing. Knowing the owner, director or agency does not automatically disqualify a board member from hearing a case if the board member concludes that the member can remain impartial. If board members are familiar with the child care agency or owner and cannot remain impartial, they must disqualify themselves from hearing the case. Efforts are made to always have more than the quorum present in case a member is disqualified at the start of a hearing. The Department conducts training sessions for the board members on their requirements to remain impartial and to avoid any conflicts of interest.

8. **Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the board have for informing the public of its meetings and making its minutes available to the public?**

The board is not subject to the TN Open Meetings Act. The records, however, are subject to the TN Administrative Procedures Act because it hears “Contested Cases” under the Act. A complete record of each hearing is therefore maintained as a public record.

9. What were the board’s revenues (by source) and expenditures (by object) for fiscal years 2011 and 2012?

The board does not generate any revenue. Travel expenses for the board during fiscal year 2011 were approximately \$618.00. Travel expenses to date for the 2012 fiscal year are \$2509.00.

The costs associated with court reporters and judges for the board hearings are not included in the above costs.

10. Please describe the appeals process that the board is involved in concerning child care agency operators. What factors does the board consider in deciding appeals cases?

When the Department serves an order or notice of legal enforcement action to an agency , it includes a certificate of service and the specific date of service. The child care agency has ten (10) calendar days from date of service to submit a written request to appeal the action. When the child care agency writes the Department to request an appeal, the recording secretary confirms that the request for appeal was within the required time frame and then initiates the process to schedule the hearing. The law requires that hearings be held within a set number of days from the date of service. Civil Penalty appeals must be heard within 90 days of the date of service and denials and revocations must be heard within 30 days of the date of service.

When hearing a case the board engages in a fact finding mission to determine if the evidence presented is sufficient to meet or overturn the Department’s burden of proof to legally justify the order. In doing so, the board evaluates the evidence to determine if the licensing rules and procedures of the Department were properly executed. Evidence is considered in accordance with the requirements established by the Administrative Procedures Act. Rulings on procedure and the admissibility of evidence are made by the Administrative Law Judge.

The law establishes criteria that may be considered by DHS in determining whether to take any legal enforcement action against a child care agency license, including:

- The safety, welfare and best interests of the children in the care of the agency;

- The capability, training and character of the persons providing or supervising the care of the children;
- The actual performance of any of the duties of caregivers, supervisors or management of a licensed child care agency demonstrates or has demonstrated a level of judgment that a reasonable person would exercise or would have exercised, under existing or under reasonably foreseeable circumstances, that would prevent or would have prevented injury, harm, or the threat of injury or harm, to any child in care;
- The quality of the methods of care and instruction provided for the children;
- The suitability of the facilities provided for the care of the children; and
- The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.

11. How many appeals pertaining to denial of license applications did the board hear during fiscal years 2011 and 2012 and what were the results of those appeals (e.g., department's actions sustained or overturned)? In how many of the cases did the applicant appeal the Board of Review's decision to the Chancery Court as authorized by Section 71-3-510(h), *Tennessee Code Annotated*, and what were the results as they pertain to the board's actions?

Fiscal Year 2011: One (1) denial case was heard by the board during this period.

Fiscal Year 2012: Four (4) denial cases were heard by the board during this period.

All of the cases heard by the board during these periods were upheld and none of the cases were appealed to Chancery Court.

12. How many appeals pertaining to revocation of licenses did the board hear during fiscal years 2011 and 2012 and what were the results of those appeals (e.g., department's actions sustained or overturned)? In how many of the cases did the licensee appeal the Board of Review's decision to the Chancery Court as authorized by Section 71-3-510(h), *Tennessee Code Annotated*, and what were the results as they pertain to the board's actions?

Fiscal Year 2011: Two (2) revocation cases were heard by the board during this period.

Fiscal Year 2012: No revocations cases were heard by the board during this period.

Both the cases that were heard by the board during fiscal year 2011 were upheld and neither case was appealed to Chancery Court.

13. How many appeals pertaining to imposition of civil penalties imposed by the Department of Human Services did the board hear during fiscal years 2011 and 2012 and what were the results of those appeals (e.g., department's actions sustained or overturned)? In how many of the cases did the licensee appeal the Board of Review's decision to the Chancery Court as authorized by Section 71-3-510(h), *Tennessee Code Annotated*, and what were the results as they pertain to the board's actions?

Fiscal Year 2011: One (1) civil penalty case was heard by the board during this period.

Fiscal Year 2012: Two (2) civil penalty cases were heard by the board during this period.

All the civil penalty cases heard by the board during these periods were upheld and none of the cases were appealed to Chancery Court.

14. Has the board heard all cases within the time guidelines mandated in Section 71-3-509(d)(4), *Tennessee Code Annotated*? If not, why not?

No; while every effort is made to schedule hearings within 30 days of service, it is usually difficult to schedule a hearing, due to the need to secure the attendance of all necessary parties (board members, Administrative Law Judge, DHS staff members, agency representatives, etc.) in such a short period of time. To provide certainty and efficiency, in 2012 DHS pre-scheduled 2 board hearing dates for each month. When an appeal request is received, it is scheduled for the next available hearing date. In addition, the agency may request that the Administrative Law Judge grant a continuance to give it additional time to prepare for the hearing; the first such requests are routinely granted.

15. Describe any items related to the board that require legislative attention and your proposed legislative changes.

The time-frame for hearing denials or revocations is only thirty (30) calendar days from the date of service. In many instances, nearly ten (10) to twelve (12) days have already elapsed before the process to schedule the hearing can even be initiated. Therefore, it is often difficult to make all the arrangements for convening the board in the time that remains. We recommend legislative change to require the hearing upon the denial or revocation to be heard by the board of review within thirty (30) days of the date of the appeal.

16. Should the board be continued? To what extent and in what ways would the absence of the board endanger the public health, safety or welfare?

Yes. The board provides an opportunity for child care agencies to appeal licensing actions initiated by DHS and to have the appeal heard by a peer group. Without the board, child care agencies would be denied their constitutional due process rights.

17. Please list all board programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

DHS is responsible for ensuring compliance by the entire Department, including the board, which is part of the Department, although it does not directly serve clients. DHS has a Title VI plan and Title VI a coordinator. DHS receives federal funding which supports the board.

[Federal financial assistance includes:

- (1) Grants and loans of Federal funds,
- (2) The grant or donation of Federal Property and interests in property,
- (3) The detail of Federal personnel,
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
- (5) Any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

28 C.F.R. Sec. 42.102(c)

[The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

28 C.F.R. Sec. 42.102(f)

***If the board does receive federal assistance, please answer questions 18 through 25.
If the board does not receive federal assistance, proceed directly to question 24.***

18. Does your board prepare a Title VI plan? If yes, please provide a copy of the most recent plan.

The board does not prepare a Title VI plan, however, DHS is required to maintain a Title VI plan.

19. Does your board have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.

The board does not have an assigned Title VI coordinator. The coordinator for DHS is Assistant General Counsel Jeffrey Blackshear at 615-313-5711. Mr. Blackshear is responsible for addressing Title VI complaints regarding the Department's programs and preparation of the Department's Title VI compliance plans.

20. To which state or federal agency (if any) does your board report concerning Title VI? Please describe the information your board submits to the state or federal government and/or provide a copy of the most recent report submitted.

DHS Title VI coordinator is responsible for submitting information to the Human Rights Commission.

21. Describe your board's actions to ensure that board staff and clients/program participants understand the requirements of Title VI. DHS is responsible for ensuring compliance throughout the Department.

Describe your board's actions to ensure it is meeting Title VI requirements. Specifically, describe any board monitoring or tracking activities related to Title VI, and how frequently these activities occur.

See answer # 19 & 20.

22. Please describe the board's procedures for handling Title VI complaints. Has your board received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).

DHS and the Title VI coordinator is responsible for handling Title VI complaints.

23. Please provide a breakdown of current board staff by title, ethnicity, and gender.

The duties of Recording Secretary are currently assigned to a Program Monitor II a male of Middle Eastern descent. In addition to serving as Recording Secretary, this individual's other job duties include responsibility for processing statewide fingerprint and criminal background checks for child and adult day care staff, scheduling and conducting Waiver Advisory Committee meetings for applicants requesting a waiver from exclusion from access to child and adult day care; and monitoring the Regulated Adult & Child Care System (RACCS) for quality assurance regarding the Legal Enforcement Tracking System (LETS) and Safety Plans to ensure staff monitoring and enforcement.

24. Please list all board contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.

None